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June 10, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: June 25, 2004
Case Number: TSO-0139

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. Background

The individual is employed with a Department of Energy (DOE) contractor. In connection with his employment, the contractor applied to DOE security on the individual's behalf for access authorization. The ensuing investigation revealed that the individual had been arrested for Driving While Intoxicated (DWI) in January 1999, and he was called in for a Personnel Security Interview (PSI) in July 2002 about this arrest and about his alcohol consumption. After the PSI, the individual was referred to a psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. As part of this evaluation, the DOE psychiatrist reviewed the individual's security file and interviewed him. He then produced a written evaluation of the individual, and sent that report to the local security office.

Based on his review of the individual's security file and his interview with him, the DOE psychiatrist found that the individual

presents with indisputable evidence of longstanding and current Alcohol Dependency. Despite this history, he continues to drink even though he is beginning to address the need for active and intensive treatment.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

He continues to drink to the point of drunkenness every other weekend and drinks alone. He spent nearly the whole calendar year of 2001 drinking excessively on a daily basis while being unemployed He has a serious family history as well of alcoholism, including severe alcoholism in his father . . . and also a pattern . . . of excessive drinking in his two older brothers. He has had an alcohol-related arrest due to driving under the influence in January of 1999, but has no other legal history related to his Alcohol Dependency. He does not have . . . withdrawal symptoms when he stops drinking, but he has a history of blackouts.

[The individual] has never achieved more than a single month's period of abstinence over the years since his college days. He recognizes himself as having an alcohol disorder, but is poorly educated about the nature of the problems related to his alcohol consumption and has never been in an alcohol rehabilitation program, nor attended Alcoholics Anonymous [AA], but has had merely a two month mandated alcohol counseling group therapy program from the Department of Motor Vehicles related to his DUI offense .

DOE psychiatrist's report at 8-9. The DOE psychiatrist concluded that the individual is a user of alcohol habitually to excess and suffers from Alcohol Dependency, with inadequate evidence of rehabilitation or reformation. He added that the individual would have to undergo 12 months of active treatment with complete sobriety in order to sufficiently demonstrate rehabilitation or reformation. Report at 9.

After reviewing this report and the other information in the individual's security file, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Manager of the local security office informed the individual of this determination in a letter, dated January 20, 2004, that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter.

II. Statement of Derogatory Information

As previously stated, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Paragraph (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." Under this paragraph, the Letter cites the DOE psychiatrist's diagnosis and statements that the individual made during his psychiatric evaluation and during the PSI. During the PSI, the individual revealed that he drinks to intoxication every Friday or Saturday night, that his current consumption of alcohol is two to three drinks per day, and that his drinking increased steadily throughout his life, until his DWI arrest. At that time, he said, he was drinking four or five drinks per day.

Paragraph (l) pertains to information indicating that the individual “has engaged in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation or duress which may cause [him] to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l). As a basis for this paragraph, the Letter cites the individual’s DWI arrest.

Subsequent to the issuance of this Letter, the individual entered into a “Recovery Agreement” with his employer. In this Agreement, the individual certified that, for a period of two years, he would

1. Maintain total abstinence from alcohol and illegal drugs;
2. Report the obtaining of all prescriptions for medications to his employer within three working days;
3. Submit to unannounced alcohol and drug testing, with a minimum of 18 samples with confirmed negative results necessary to document recovery;
4. Attend and participate in the contractor’s Employee Assistance Program (EAP), a local alcohol rehabilitation clinic and Alcoholics Anonymous, and
5. Grant his employer access to all documents needed to verify the individual’s compliance with these requirements.

Failure to abide by the terms of this agreement was punishable by disciplinary action up to and including termination of employment.

Approximately one month after signing this agreement, the individual tested positive for alcohol. An amended Notification Letter was issued to the individual. This Letter is identical to the one issued in January 2004, except for the addition of the positive test as a factor supporting the DOE’s invocation of paragraph (l). The amended Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The individual requested a hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that he should therefore not be granted a clearance at this time.

IV. THE HEARING

At the hearing, the individual presented the testimony of his manager, his psychiatrist, his AA sponsor, an EAP counselor, and himself in an attempt to demonstrate rehabilitation from alcohol dependence. The DOE psychiatrist testified for the DOE.

The individual testified that his father was an alcoholic whose divorce from the individual’s mother in 1996 was caused largely by the father’s drinking. Hearing Transcript (Tr.) at 26. Three years later, the father was hospitalized for congestive heart failure, a condition which, according to the individual, was related to his alcoholism, among other factors. At that point, he said, he “really understood for the first time that his life was threatened by his use of alcohol,” and that this frightened the individual because he saw much of his father’s behavior in himself. His father died a year later. Tr. at 27.

In 1999, the individual was arrested for DWI. Pursuant to that arrest, he was required by the court to attend alcohol education classes. The individual stated that although he had struggled with controlling his drinking “all through [his] adult life, . . . that was the first time when it became clear to me that I had a real problem that I really needed and wanted to address.” Tr. at 29. After this arrest, the individual went through a period during which he would, repeatedly and without the benefit of AA or any other outside intervention, abstain from drinking for a few weeks, relapse, and then attempt to quit again. Tr. at 29-30.

In 2002, the individual was evaluated by the DOE psychiatrist during the process of determining his eligibility for access authorization. Although the individual did not receive a copy of the DOE psychiatrist’s evaluation until approximately one year later, at the end of their interview, the DOE psychiatrist “explained the nature of his findings, which was consistent with what I read in his report a year later, that I was a practicing alcoholic” Tr. at 32. He testified that this assessment “was a pretty big shock to me, in the sense that this was the first time I really understood that my drinking was going to be a serious problem for me with respect to my security clearance.” Tr. at 33. He again attempted, unsuccessfully, to quit on his own. *Id.* In July 2003, the individual began seeing a psychologist to address his alcohol dependence and problems with depression. Tr. at 34-35. He began attending AA at this time, he said, but his attendance was sporadic because he was still struggling with denial and the idea that he could solve his drinking problem through his own efforts. Tr. at 36. In October 2003, the individual started seeing a psychiatrist while maintaining his relationship with the psychologist. In December of that year, he began attending AA on a regular basis. Tr. at 38.

In 2004, the individual was able to obtain access to the DOE psychiatrist’s written report. He testified that he agreed with the DOE psychiatrist’s diagnosis of alcohol dependence, and that this was “another significant step towards my breaking down denial.” Tr. at 39. He subsequently consulted with the local EAP counselor, executed the Recovery Agreement referred to above, and entered into a 28-day residential alcohol rehabilitation program at a local facility. Tr. at 40-43. The weekend after his discharge, he “began developing an enormous amount of anxiety about how [he] could reenter into the work environment after stepping completely out of the flow. In particular, [he] was very concerned how [he] was going to explain [his] absence to [his] co-workers.” Tr. at 45. He addressed this anxiety by having approximately eight or nine drinks on the Sunday before his return to work. Tr. at 46. During the following morning, the individual was administered a Breathalyzer test, which revealed a blood alcohol content of .02. *Id.* After consulting with an EAP counselor, the individual decided to readmit himself into the residential alcohol treatment program. Tr. at 48. When asked to compare his first stay in the program with his second, he said that “I was still intellectualizing almost everything about my drinking problem in the first four weeks, and as a result, . . . I still had a problem with accepting the magnitude of my problem and the extent [to which] I needed help.” Tr. at 48-49. However, during his second session, he “was really stripped bare, and my willingness to pay attention to

not just the things that sounded right to me, but to everything I was hearing . . . went up significantly.” Tr. at 49. After participating in the program for an additional three weeks, the individual returned to work. Since then, he said, he has taken randomly-scheduled Breathalyzer tests each month, all of which have been negative. Tr. at 50, Individual’s Exhibit 5. He last drank alcohol just prior to his second rehabilitation session, approximately nine months prior to the hearing. *Id.* Since this latter session, he testified that he has attended weekly “continuing care” meetings at the rehabilitation center, seen his therapist, his psychiatrist and his EAP counselor on a regular basis, taken Antabuse, gotten an AA sponsor and attended AA meetings an average of three times a week. Tr. at 51-52.² He further stated that the nine months that he had abstained from drinking as of the date of the hearing is the longest that he has remained sober in his adult life, Tr. at 54, and that he intends to remain totally abstinent for the rest of his life. Tr. at 60.

The EAP counselor then testified. She stated that initially, she met with the individual every week to monitor his progress, but has since changed the frequency of their meetings to once every other week because of the progress the individual has made. Tr. at 95-96. This progress is reflected in the individual’s motivation to pursue his rehabilitation which, the counselor believes, comes from the individual himself and not outside pressures. Tr. at 96. She concluded that because of the positive steps that the individual has taken, she has no concerns about his judgment or reliability or about his suitability for a security clearance. Tr. at 101.

The individual’s psychiatrist testified that when he first evaluated the individual in the fall of 2003, he diagnosed him as suffering from Alcohol Dependence. Tr. at 118-119. Accordingly, he recommended that the individual abstain from alcohol completely and enter into a treatment program, either on an outpatient or inpatient basis. Tr. at 120. At that time, he said, the individual was not willing to abstain completely, but that he agreed to begin going to AA meetings and decrease his drinking over a period of time, with the goal of abstinence. *Id.* However, his AA attendance was sporadic, and the individual was unable to abstain for any significant period of time before entering into an inpatient treatment program. Tr. at 120, 122. Prior to his participation in that program, the individual was in denial as to the extent and seriousness of his drinking problem. Tr. at 125. However, after his 2004 relapse and second experience with the program, the individual’s psychiatrist said that he was able to overcome that problem. Tr. at 126. He concluded that the individual appears to be strongly committed to sobriety and that his prognosis is favorable if he continues to follow his current course of action. Tr. at 129-134.

²The individual also testified that he is taking Wellbutrin and Lexapro, two anti-depressants, and Naltrexone, which, he said, is supposed to make it easier for him to resist the urge to drink. Tr. at 80.

The individual's AA sponsor also testified. He stated that he became the individual's sponsor in July 2004, and that he and the individual talk at least weekly. The individual, he added, is doing everything that he should to maintain his sobriety. "I see him active in aftercare. I see him continuing to work with [the EAP counselor]. I am well aware of the aftercare . . . and I'm primarily and extremely pleased with his association with other recovering alcoholics here at work." Tr. at 157. He explained that this is important because these associations make it difficult for the recovering alcoholic to experience problems with his recovery without someone knowing about it. That person can then notify the recovering alcoholic's sponsor, who can then confront his charge. Tr. at 151. He added that this has not happened with the individual. Tr. at 158. The sponsor stated that he has no doubts as to whether the individual will remain sober as long as he continues to take the steps he has been taking, and that he sees nothing that would stop the individual from continuing his current course. The sponsor then indicated that, while he understood the reasoning behind a requirement of at least 12 months of sobriety to demonstrate adequate reformation or rehabilitation, he did not believe that it was applicable to the individual's situation. During a 12 month period, he said, an "individual has gone through an entire calendar year of events . . . , and so it is kind of the . . . center point from which you say, 'Okay, this is the basis.'" Tr. at 164. However, because of the quality of the individual's sobriety, the diligent and internally-motivated manner in which he has pursued his recovery, and the presence of "a very warm and friendly, but very observant, group of . . . employees" at the individual's jobsite, the individual's sponsor concluded that an additional three months of sobriety would not be needed to demonstrate adequate reformation or rehabilitation. Tr. at 165.

After witnessing the testimony of all of the witnesses, the DOE psychiatrist testified that he had heard nothing that would cause him to modify the recommendation set forth in his written evaluation of twelve months' sobriety as adequate evidence of reformation or rehabilitation. Tr. at 179. Although he commended the individual for the steps he had taken and for the diligence with which he has pursued his recovery, "the very long-standing and very serious nature of his alcoholism would suggest to me that it wouldn't be a basis for deviating from the [12 month] standard in this case." Tr. at 180.

V. ANALYSIS

After reviewing the testimony presented and all of the exhibits submitted by the parties, I am impressed by the progress that the individual has made in addressing his alcohol dependence, and I believe that if he continues on his current path, his chances of suffering a relapse will be small. However, I agree with the position taken by the DOE psychiatrist that a 12 month period of abstinence, along with continued therapy, is necessary to demonstrate adequate rehabilitation

or reformation.³ Because the individual had approximately nine months of sobriety as of the date of the hearing, I cannot conclude that he has adequately addressed the security concerns raised by his alcohol dependence at this time.

I reach this conclusion primarily because of the individual's history of alcohol dependence, including a number of failed attempts at abstinence. After his 1999 DUI arrest, the individual "quit drinking . . . for a few . . . weeks at a time, and then I would lapse and quit for a few more weeks at a time." Tr. at 29. After the individual was informed by the DOE psychiatrist during his 2002 evaluation that he suffered from alcohol dependence, the individual again attempted, unsuccessfully, to quit drinking. Tr. at 33. Then, when the individual received the DOE psychiatrist's written report in 2003, he signed the previously-mentioned Recovery Agreement and entered into a 28 day inpatient alcohol treatment program, only to suffer another relapse shortly after his discharge. Tr. at 46. These instances attest to the persistent nature of the individual's disease, and lead me to agree with the DOE psychiatrist's recommendation of one full year of sobriety.

Based on the factors discussed above, I find that the individual has not demonstrated that granting him a clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted access authorization at this time.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: **June 10, 2005**

³Indeed, although he testified that the individual's prognosis was good, the individual's own psychiatrist admitted that a full year of sobriety was "an important milestone," and that he "would like to see one year of sobriety." Tr. at 138-139.